Filed 12/8/08 In re C.H. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re C.H. et al., Persons Coming Under the Juvenile Court Law.	B206590 (Los Angeles County Super. Ct. No. CK59299)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. N.S., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Robert Stevenson, Referee. Affirmed.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Jacklyn K. Louie, Senior Deputy County Counsel, for Plaintiff and Respondent.

A mother appeals from an order terminating parental rights to her three children. Her sole contention on appeal is that notice given under the Indian Child Welfare Act (ICWA), 25 U.S.C. section 1901 et seq., was inadequate. We agree the service to one tribe was technically deficient, but find the error was harmless. Accordingly, we affirm.

FACTUAL AND PROCEDURAL HISTORY

In light of the limited nature of the issue raised by this appeal, a brief statement of the factual and procedural history will suffice.

N.S. (mother) appeals from an order terminating parental rights to her three children, C.H., S.H., and A.H. (hereafter, collectively, "the children").[1] The children were removed from mother's care in June 2005 and placed in foster care, after it was alleged that mother physically abused one child, and had a history of emotional problems and mental illness. Welfare and Institutions Code section 300 petitions were filed, and the children were subsequently declared juvenile court dependents. (Welf. & Inst. Code, § 300, subds. (a), (b) and (j).[2]) Mother was given monitored visitation and reunification services, but failed to participate in her case plan. Mother also failed to visit the children regularly, and ceased all contact with them after early August 2006. A permanency planning hearing was initially set for September 2006, and thereafter continued numerous times for reasons not relevant here. (§ 366.26.)

In August 2007, at one continued permanency planning hearing, the children's maternal grandmother informed the court for the first time that she had Native-American ancestry. The grandmother reported Blackfeet heritage on both sides of her family. The court ordered DCFS to interview the maternal grandmother and send appropriate ICWA notices.

DCFS sent notice of the dependency proceedings to the Bureau of Indian Affairs (BIA), Blackfeet Tribe, Eastern Band of Cherokee Indians, the Cherokee Nation and the

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[1] The children's father is not a party to this appeal.

[2] All undesignated statutory references are to this Code.

United Keetoowah Band of Cherokee.[3] All the notices, except the one sent to the Blackfeet Tribe, were sent to a designated tribal agent. In November 2007, DCFS received responses from the Cherokee Nation, the United Keetoowah Band of Cherokee and the Eastern Band of Cherokee Indians stating the children were not Indian children or were not eligible for enrollment with the respective tribes. In mid-November, the juvenile court made a premature finding that the ICWA did not apply.

On December 6, 2007, the juvenile court realized certain ICWA materials were missing. The permanency planning hearing was continued that day, and twice more, to permit DCFS to prepare its report, submit missing notices sent to the tribes and BIA, and their responses thereto and so the court could ensure notice was sent to the appropriate tribal representatives. The hearing was finally conducted on March 14, 2008. The court noted it had received the appropriate materials for the Cherokee tribes, and the ICWA did not apply. The juvenile court terminated parental rights, and selected adoption as the children's permanent plan.

In August 2008, DCFS submitted to the juvenile court an October 2007 letter from the Blackfeet Tribe.[4] That letter was signed by Raquel Vaile, Inquiry Technician for the Blackfeet Tribe's Indian Child Welfare Act Program, and listed all maternal relatives and the children's father. In her letter, Vaile stated she had researched the tribe's enrollment records, and that neither mother's youngest child nor any of the identified relatives were found on the tribal roll. DCFS also submitted the Notice of Involuntary Custody Proceedings for an Indian Child for the December 6, 2007 permanency planning hearing that it sent the Blackfeet Tribe on behalf of the two eldest children; a return receipt from the Blackfeet Tribe, signed by Vaile; and a delivery confirmation from the United States

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[3] The record does not reveal the reason for inclusion of the Cherokee.

[4] DCFS filed a Motion to take Additional Evidence on Appeal. The motion was granted.

Postal Service. The juvenile court considered those documents, and found again that the ICWA did not apply.

DISCUSSION

Congress enacted the ICWA to protect the best interests of Indian children[5] and promote the stability of Indian families, by establishing minimum procedural safeguards that must be satisfied before an Indian child may be removed from his or her family, and placed in a foster or adoptive home. (25 U.S.C. § 1902.) The ICWA permits a tribe to intervene in a dependency proceeding because it presumes it is in the child's best interest to retain tribal ties, and that it is in the tribe's interest to preserve future generations. (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.)

To that end, once a juvenile court knows or has reason to know an Indian child is involved in a dependency action, notice of the proceedings and of the tribe's right to intervene must be sent by registered mail, return receipt requested, to the tribe's chairperson or designated agent for service or, if the tribe cannot be determined, to the Secretary of the Interior. (25 U.S.C. § 1912(a); Welf. & Inst. Code, § 224.2, subd. (a); Cal. Rules of Court, rule 5.481(b)(1), (4).) Copies of the notices, return receipts and any responses received from the tribes or Secretary of the Interior must be filed with the juvenile court. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 178-179.) "The purpose of the requirement that notice be sent to the designated persons is to ensure that notice is received by someone trained and authorized to make the necessary ICWA determinations, including whether the minors are members or eligible for membership and whether the tribe will elect to participate in the proceedings." (*In re J.T.* (2007) 154 Cal.App.4th 986, 994.) Sending improper ICWA notice is error, and that error is prejudicial if the record lacks conclusive evidence the tribe received actual notice. (*In re*

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[5] An "Indian child" is an unmarried person under the age of 18 who is either a member of a federally recognized Indian tribe or the biological child of a member of such a tribe and eligible for membership in that tribe. (25 U.S.C. § 1903(4).)

Mary G. (2007) 151 Cal.App.4th 184, 211; *Nicole K. v. Superior Court* (2007) 146 Cal.App.4th 779, 783.)

Mother's sole contention on appeal from the termination of her parental rights is that the juvenile court erred in finding the ICWA did not apply because notice to the Blackfeet Tribe was not proper. Specifically, she asserts the notice did not specify the designated agent for the tribe and, because there is no signed return receipt or tribal letter in the record, the error cannot be deemed harmless.

Mother's once correct assertion has been rendered moot, given the post-judgment evidence received from the Blackfeet Tribe. The return receipt from the tribe, as well as the delivery confirmation, verify the tribe received actual notice of this action. We note that these materials, considered alone, may have been insufficient to render the juvenile court's error harmless, given DCFS's failure to designate the agent for service on the tribal notice. However, after reviewing these materials together with the tribe's October 10, 2007 letter listing the children's maternal relatives, we conclude the failure to designate the tribal agent was harmless. Deficiencies in an ICWA notice are generally prejudicial, but may be deemed harmless under some circumstances. (*In re S.B.* (2005) 130 Cal.App.4th 1148, 1162.) In *In re J.T., supra,* 154 Cal.App.4th 986, the court found ICWA notices lacking the designated agent or tribal chairperson were harmless, where there was other evidence indicating actual notice was received, viz., the tribes responded to the notice stating the children were not members or eligible to become members of the tribes. (*Id*. at p. 994.)

We are aware that, in this case, the Blackfeet Tribe wrote to DCFS stating only that mother's youngest child was not an Indian child. Mother does not contend the information the tribe received was deficient as to any child, and the letter listed all the children's maternal relatives. The tribe's determination that one child is not eligible for tribal membership is equally applicable to all of mother's children who share the same heritage. Finally, the return receipt from the Blackfeet tribe was signed by Vaile, the same individual who researched the tribal roll and wrote the October 2007 tribal letter. Again, the point of the ICWA notice requirements is to ensure notice is received by

someone with the training and authority to make ICWA determinations. (*In re J.T., supra,* 154 Cal.App.4th at p. 994; *In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1421-1422 [concluding that substantial compliance with ICWA notice provisions is sufficient so long as the tribe has actual notice of the proceedings and its right to intervene].) On this record, we have no difficulty concluding the notice was actually received by the proper tribal representative. Accordingly, we conclude any error committed with respect to the ICWA notices was harmless.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED

WEISBERG, J.*

We concur:

MALLANO, P.J.

ROTHSCHILD, J.

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*Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.